

AMENDED IN ASSEMBLY AUGUST 13, 2008

AMENDED IN ASSEMBLY AUGUST 7, 2008

AMENDED IN SENATE APRIL 15, 2008

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1302**

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**Introduced by Senator Cogdill**

February 20, 2008

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An act to amend Sections 290.46, 1203.065, 1203.067, 12021, 12022.3, and 12022.8 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as amended, Cogdill. Sex offenders.

Existing law provides that, notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of certain sex offenses.

This bill would add to those certain sex offenses for these purposes; specified sex offenses perpetrated against a child who is 10 years of age or younger.

Existing law prohibits probation; and the suspension of the execution or imposition of a sentence; for, among other crimes, using a minor to perform prohibited sex acts, as specified, a crime punishable by 16 months, 2, or 3 years in prison.

This bill would instead; prohibit probation where use of the minor for prohibited sex acts is for commercial purposes, a crime punishable by 3, 6, or 8 years in prison.

Existing law provides that for persons convicted of certain felony sex offenses, the court must meet certain requirements before the person may be granted probation.

This bill would add the offense of continuous sexual abuse of a child to the list of offenses that are subject to these provisions.

By changing the punishment for an existing crime, this bill would impose a state-mandated local program.

Existing law provides that any person convicted of specified misdemeanors who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm, is guilty of a public offense, as specified.

This bill would add the offense of sexual battery, as specified, to the list of disqualifying misdemeanors.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides sentencing enhancements for persons who commit or attempt to commit specified sex offenses while armed with or using a deadly weapon or firearm.

This bill would additionally apply this enhancement to persons who commit assault with the intent to commit certain sex offenses while armed with or using these weapons.

By expanding the scope of an existing sentencing enhancement, this bill would impose a state-mandated local program.

Existing law provides a sentencing enhancement for persons who inflict great bodily injury on victims in the commission or attempted commission of specified sex offenses.

This bill would additionally apply this enhancement to persons who inflict great bodily injury in the commission of assault with the intent to commit certain sex offenses.

By expanding the scope of an existing sentencing enhancement, this bill would impose a state-mandated local program.

This bill would incorporate additional changes in Section 290.46 of the Penal Code, proposed by SB 1187, to be operative only if SB 1187 and this bill are chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release

1 for his or her most recent offense requiring registration to the  
2 Department of Justice in a manner and format approved by the  
3 department.

4 (ii) Any state facility that releases a person who is required to  
5 register pursuant to Section 290 from incarceration whose  
6 incarceration was for a felony committed subsequently to the  
7 offense for which he or she is required to register shall, within 30  
8 days of release, advise the Department of Justice of that fact.

9 (iii) Any state facility that, prior to January 1, 2007, released  
10 from incarceration a person who was incarcerated because of a  
11 crime for which he or she is required to register as a sex offender  
12 pursuant to Section 290 shall provide the year of release for his or  
13 her most recent offense requiring registration to the Department  
14 of Justice in a manner and format approved by the department.  
15 The information provided by the Department of Corrections and  
16 Rehabilitation shall be limited to information that is currently  
17 maintained in an electronic format.

18 (iv) Any state facility that, prior to January 1, 2007, released a  
19 person who is required to register pursuant to Section 290 from  
20 incarceration whose incarceration was for a felony committed  
21 subsequently to the offense for which he or she is required to  
22 register shall advise the Department of Justice of that fact in a  
23 manner and format approved by the department. The information  
24 provided by the Department of Corrections and Rehabilitation  
25 shall be limited to information that is currently maintained in an  
26 electronic format.

27 (3) The State Department of Mental Health shall provide to the  
28 Department of Justice Sex Offender Tracking Program the names  
29 of all persons committed to its custody pursuant to Article 4  
30 (commencing with Section 6600) of Chapter 2 of Part 2 of Division  
31 6 of the Welfare and Institutions Code, within 30 days of  
32 commitment, and shall provide the names of all of those persons  
33 released from its custody within five working days of release.

34 (b) (1) On or before July 1, 2005, with respect to a person who  
35 has been convicted of the commission or the attempted commission  
36 of any of the offenses listed in, or who is described in, paragraph  
37 (2), the Department of Justice shall make available to the public  
38 via the Internet Web site his or her name and known aliases, a  
39 photograph, a physical description, including gender and race, date  
40 of birth, criminal history, prior adjudication as a sexually violent

1 predator, the address at which the person resides, and any other  
2 information that the Department of Justice deems relevant, but not  
3 the information excluded pursuant to subdivision (a).

4 (2) This subdivision shall apply to the following offenses and  
5 offenders:

6 (A) Section 187 committed in the perpetration, or an attempt to  
7 perpetrate, rape or any act punishable under Section 286, 288,  
8 288a, or 289.

9 (B) Section 207 committed with intent to violate Section 261,  
10 286, 288, 288a, or 289.

11 (C) Section 209 committed with intent to violate Section 261,  
12 286, 288, 288a, or 289.

13 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.

14 (E) Section 264.1.

15 (F) Section 269.

16 (G) Subdivision (c) or (d) of Section 286.

17 (H) Subdivision (a), (b), or (c) of Section 288, provided that the  
18 offense is a felony.

19 (I) Subdivision (c) or (d) of Section 288a.

20 (J) Section 288.3, provided that the offense is a felony.

21 (K) Section 288.4, provided that the offense is a felony.

22 (L) Section 288.5.

23 (M) Subdivision (a) or (j) of Section 289.

24 (N) Section 288.7.

25 (O) Any person who has ever been adjudicated a sexually violent  
26 predator, as defined in Section 6600 of the Welfare and Institutions  
27 Code.

28 (c) (1) On or before July 1, 2005, with respect to a person who  
29 has been convicted of the commission or the attempted commission  
30 of any of the offenses listed in paragraph (2), the Department of  
31 Justice shall make available to the public via the Internet Web site  
32 his or her name and known aliases, a photograph, a physical  
33 description, including gender and race, date of birth, criminal  
34 history, the community of residence and ZIP Code in which the  
35 person resides or the county in which the person is registered as a  
36 transient, and any other information that the Department of Justice  
37 deems relevant, but not the information excluded pursuant to  
38 subdivision (a). On or before July 1, 2006, the Department of  
39 Justice shall determine whether any person convicted of an offense  
40 listed in paragraph (2) also has one or more prior or subsequent

1 convictions of an offense listed in subdivision (c) of Section 290,  
2 and, for those persons, the Department of Justice shall make  
3 available to the public via the Internet Web site the address at  
4 which the person resides. However, the address at which the person  
5 resides shall not be disclosed until a determination is made that  
6 the person is, by virtue of his or her additional prior or subsequent  
7 conviction of an offense listed in subdivision (c) of Section 290,  
8 subject to this subdivision.

9 (2) This subdivision shall apply to the following offenses:

10 (A) Section 220, except assault to commit mayhem.

11 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

12 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
13 (i), of Section 286.

14 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
15 (i), of Section 288a.

16 (E) Subdivision (b), (d), (e), or (i) of Section 289.

17 (d) (1) On or before July 1, 2005, with respect to a person who  
18 has been convicted of the commission or the attempted commission  
19 of any of the offenses listed in, or who is described in, this  
20 subdivision, the Department of Justice shall make available to the  
21 public via the Internet Web site his or her name and known aliases,  
22 a photograph, a physical description, including gender and race,  
23 date of birth, criminal history, the community of residence and  
24 ZIP Code in which the person resides or the county in which the  
25 person is registered as a transient, and any other information that  
26 the Department of Justice deems relevant, but not the information  
27 excluded pursuant to subdivision (a) or the address at which the  
28 person resides.

29 (2) This subdivision shall apply to the following offenses and  
30 offenders:

31 (A) Subdivision (a) of Section 243.4, provided that the offense  
32 is a felony.

33 (B) Section 266, provided that the offense is a felony.

34 (C) Section 266c, provided that the offense is a felony.

35 (D) Section 266j.

36 (E) Section 267.

37 (F) Subdivision (c) of Section 288, provided that the offense is  
38 a misdemeanor.

39 (G) Section 288.3, provided that the offense is a misdemeanor.

40 (H) Section 288.4, provided that the offense is a misdemeanor.

1 (I) Section 626.81.

2 (J) Section 647.6.

3 (K) Section 653c.

4 (L) Any person required to register pursuant to Section 290  
5 based upon an out-of-state conviction, unless that person is  
6 excluded from the Internet Web site pursuant to subdivision (e).  
7 However, if the Department of Justice has determined that the  
8 out-of-state crime, if committed or attempted in this state, would  
9 have been punishable in this state as a crime described in  
10 subdivision (c) of Section 290, the person shall be placed on the  
11 Internet Web site as provided in subdivision (b) or (c), as applicable  
12 to the crime.

13 (e) (1) If a person has been convicted of the commission or the  
14 attempted commission of any of the offenses listed in this  
15 subdivision, and he or she has been convicted of no other offense  
16 listed in subdivision (b), (c), or (d) other than those listed in this  
17 subdivision, that person may file an application with the  
18 Department of Justice, on a form approved by the department, for  
19 exclusion from the Internet Web site. If the department determines  
20 that the person meets the requirements of this subdivision, the  
21 department shall grant the exclusion and no information concerning  
22 the person shall be made available via the Internet Web site  
23 described in this section. He or she bears the burden of proving  
24 the facts that make him or her eligible for exclusion from the  
25 Internet Web site. However, a person who has filed for or been  
26 granted an exclusion from the Internet Web site is not relieved of  
27 his or her duty to register as a sex offender pursuant to Section  
28 290 nor from any otherwise applicable provision of law.

29 (2) This subdivision shall apply to the following offenses:

30 (A) A felony violation of subdivision (a) of Section 243.4.

31 (B) Section 647.6, if the offense is a misdemeanor.

32 (C) (i) An offense for which the offender successfully  
33 completed probation, provided that the offender submits to the  
34 department a certified copy of a probation report, presentencing  
35 report, report prepared pursuant to Section 288.1, or other official  
36 court document that clearly demonstrates that the offender was  
37 the victim's parent, stepparent, sibling, or grandparent and that the  
38 crime did not involve either oral copulation or penetration of the  
39 vagina or rectum of either the victim or the offender by the penis  
40 of the other or by any foreign object.

1 (ii) An offense for which the offender is on probation at the  
2 time of his or her application, provided that the offender submits  
3 to the department a certified copy of a probation report,  
4 presentencing report, report prepared pursuant to Section 288.1,  
5 or other official court document that clearly demonstrates that the  
6 offender was the victim's parent, stepparent, sibling, or grandparent  
7 and that the crime did not involve either oral copulation or  
8 penetration of the vagina or rectum of either the victim or the  
9 offender by the penis of the other or by any foreign object.

10 (iii) If, subsequent to his or her application, the offender commits  
11 a violation of probation resulting in his or her incarceration in  
12 county jail or state prison, his or her exclusion, or application for  
13 exclusion, from the Internet Web site shall be terminated.

14 (iv) For the purposes of this subparagraph, "successfully  
15 completed probation" means that during the period of probation  
16 the offender neither received additional county jail or state prison  
17 time for a violation of probation nor was convicted of another  
18 offense resulting in a sentence to county jail or state prison.

19 (3) If the department determines that a person who was granted  
20 an exclusion under a former version of this subdivision would not  
21 qualify for an exclusion under the current version of this  
22 subdivision, the department shall rescind the exclusion, make a  
23 reasonable effort to provide notification to the person that the  
24 exclusion has been rescinded, and, no sooner than 30 days after  
25 notification is attempted, make information about the offender  
26 available to the public on the Internet Web site as provided in this  
27 section.

28 (4) Effective January 1, 2012, no person shall be excluded  
29 pursuant to this subdivision unless the offender has submitted to  
30 the department documentation sufficient for the department to  
31 determine that he or she has a SARATSO risk level of low or  
32 moderate-low.

33 (f) The Department of Justice shall make a reasonable effort to  
34 provide notification to persons who have been convicted of the  
35 commission or attempted commission of an offense specified in  
36 subdivision (b), (c), or (d), that on or before July 1, 2005, the  
37 department is required to make information about specified sex  
38 offenders available to the public via an Internet Web site as  
39 specified in this section. The Department of Justice shall also make



1 a reasonable effort to provide notice that some offenders are  
2 eligible to apply for exclusion from the Internet Web site.

3 (g) (1) A designated law enforcement entity, as defined in  
4 subdivision (f) of Section 290.45, may make available information  
5 concerning persons who are required to register pursuant to Section  
6 290 to the public via an Internet Web site as specified in paragraph  
7 (2).

8 (2) The law enforcement entity may make available by way of  
9 an Internet Web site the information described in subdivision (c)  
10 if it determines that the public disclosure of the information about  
11 a specific offender by way of the entity's Internet Web site is  
12 necessary to ensure the public safety based upon information  
13 available to the entity concerning that specific offender.

14 (3) The information that may be provided pursuant to this  
15 subdivision may include the information specified in subdivision  
16 (b) of Section 290.45. However, that offender's address may not  
17 be disclosed unless he or she is a person whose address is on the  
18 Department of Justice's Internet Web site pursuant to subdivision  
19 (b) or (c).

20 (h) For purposes of this section, "offense" includes the statutory  
21 predecessors of that offense, or any offense committed in another  
22 jurisdiction that, if committed or attempted to be committed in this  
23 state, would have been punishable in this state as an offense listed  
24 in subdivision (c) of Section 290.

25 (i) Notwithstanding Section 6254.5 of the Government Code,  
26 disclosure of information pursuant to this section is not a waiver  
27 of exemptions under Chapter 3.5 (commencing with Section 6250)  
28 of Title 1 of Division 7 of the Government Code and does not  
29 affect other statutory restrictions on disclosure in other situations.

30 (j) (1) Any person who uses information disclosed pursuant to  
31 this section to commit a misdemeanor shall be subject to, in  
32 addition to any other penalty or fine imposed, a fine of not less  
33 than ten thousand dollars (\$10,000) and not more than fifty  
34 thousand dollars (\$50,000).

35 (2) Any person who uses information disclosed pursuant to this  
36 section to commit a felony shall be punished, in addition and  
37 consecutive to any other punishment, by a five-year term of  
38 imprisonment in the state prison.

39 (k) Any person who is required to register pursuant to Section  
40 290 who enters an Internet Web site established pursuant to this

1 section shall be punished by a fine not exceeding one thousand  
2 dollars (\$1,000), imprisonment in a county jail for a period not to  
3 exceed six months, or by both that fine and imprisonment.

4 (I) (1) A person is authorized to use information disclosed  
5 pursuant to this section only to protect a person at risk.

6 (2) Except as authorized under paragraph (1) or any other  
7 provision of law, use of any information that is disclosed pursuant  
8 to this section for purposes relating to any of the following is  
9 prohibited:

10 (A) Health insurance.

11 (B) Insurance.

12 (C) Loans.

13 (D) Credit.

14 (E) Employment.

15 (F) Education, scholarships, or fellowships.

16 (G) Housing or accommodations.

17 (H) Benefits, privileges, or services provided by any business  
18 establishment.

19 (3) This section shall not affect authorized access to, or use of,  
20 information pursuant to, among other provisions, Sections 11105  
21 and 11105.3, Section 8808 of the Family Code, Sections 777.5  
22 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871  
23 of the Health and Safety Code, and Section 432.7 of the Labor  
24 Code.

25 (4) (A) Any use of information disclosed pursuant to this section  
26 for purposes other than those provided by paragraph (1) or in  
27 violation of paragraph (2) shall make the user liable for the actual  
28 damages, and any amount that may be determined by a jury or a  
29 court sitting without a jury, not exceeding three times the amount  
30 of actual damage, and not less than two hundred fifty dollars  
31 (\$250), and attorney's fees, exemplary damages, or a civil penalty  
32 not exceeding twenty-five thousand dollars (\$25,000).

33 (B) Whenever there is reasonable cause to believe that any  
34 person or group of persons is engaged in a pattern or practice of  
35 misuse of the information available via an Internet Web site  
36 established pursuant to this section in violation of paragraph (2),  
37 the Attorney General, any district attorney, or city attorney, or any  
38 person aggrieved by the misuse is authorized to bring a civil action  
39 in the appropriate court requesting preventive relief, including an  
40 application for a permanent or temporary injunction, restraining

1 order, or other order against the person or group of persons  
2 responsible for the pattern or practice of misuse. The foregoing  
3 remedies shall be independent of any other remedies or procedures  
4 that may be available to an aggrieved party under other provisions  
5 of law, including Part 2 (commencing with Section 43) of Division  
6 1 of the Civil Code.

7 (m) The public notification provisions of this section are  
8 applicable to every person described in this section, without regard  
9 to when his or her crimes were committed or his or her duty to  
10 register pursuant to Section 290 arose, and to every offense  
11 described in this section, regardless of when it was committed.

12 (n) On or before July 1, 2006, and every year thereafter, the  
13 Department of Justice shall make a report to the Legislature  
14 concerning the operation of this section.

15 (o) A designated law enforcement entity and its employees shall  
16 be immune from liability for good faith conduct under this section.

17 (p) The Attorney General, in collaboration with local law  
18 enforcement and others knowledgeable about sex offenders, shall  
19 develop strategies to assist members of the public in understanding  
20 and using publicly available information about registered sex  
21 offenders to further public safety. These strategies may include,  
22 but are not limited to, a hotline for community inquiries,  
23 neighborhood and business guidelines for how to respond to  
24 information posted on this Internet Web site, and any other resource  
25 that promotes public education about these offenders.

26 SEC. 1.5. Section 290.46 of the Penal Code is amended to read:

27 290.46. (a) (1) On or before the dates specified in this section,  
28 the Department of Justice shall make available information  
29 concerning persons who are required to register pursuant to Section  
30 290 to the public via an Internet Web site as specified in this  
31 section. The department shall update the Internet Web site on an  
32 ongoing basis. All information identifying the victim by name,  
33 birth date, address, or relationship to the registrant shall be  
34 excluded from the Internet Web site. The name or address of the  
35 person's employer and the listed person's criminal history other  
36 than the specific crimes for which the person is required to register  
37 shall not be included on the Internet Web site. The Internet Web  
38 site shall be translated into languages other than English as  
39 determined by the department.

1 (2) (A) On or before July 1, 2010, the Department of Justice  
2 shall make available to the public, via an Internet Web site as  
3 specified in this section, as to any person described in subdivision  
4 (b), (c), or (d), the following information:

5 (i) The year of conviction of his or her most recent offense  
6 requiring registration pursuant to Section 290.

7 (ii) The year he or she was released from incarceration for that  
8 offense.

9 (iii) Whether he or she was subsequently incarcerated for any  
10 other felony, if that fact is reported to the department. If the  
11 department has no information about a subsequent incarceration  
12 for any felony, that fact shall be noted on the Internet Web site.

13 However, no year of conviction shall be made available to the  
14 public unless the department also is able to make available the  
15 corresponding year of release of incarceration for that offense, and  
16 the required notation regarding any subsequent felony.

17 (B) (i) Any state facility that releases from incarceration a  
18 person who was incarcerated because of a crime for which he or  
19 she is required to register as a sex offender pursuant to Section  
20 290 shall, within 30 days of release, provide the year of release  
21 for his or her most recent offense requiring registration to the  
22 Department of Justice in a manner and format approved by the  
23 department.

24 (ii) Any state facility that releases a person who is required to  
25 register pursuant to Section 290 from incarceration whose  
26 incarceration was for a felony committed subsequently to the  
27 offense for which he or she is required to register shall, within 30  
28 days of release, advise the Department of Justice of that fact.

29 (iii) Any state facility that, prior to January 1, 2007, released  
30 from incarceration a person who was incarcerated because of a  
31 crime for which he or she is required to register as a sex offender  
32 pursuant to Section 290 shall provide the year of release for his or  
33 her most recent offense requiring registration to the Department  
34 of Justice in a manner and format approved by the department.  
35 The information provided by the Department of Corrections and  
36 Rehabilitation shall be limited to information that is currently  
37 maintained in an electronic format.

38 (iv) Any state facility that, prior to January 1, 2007, released a  
39 person who is required to register pursuant to Section 290 from  
40 incarceration whose incarceration was for a felony committed

1 subsequently to the offense for which he or she is required to  
2 register shall advise the Department of Justice of that fact in a  
3 manner and format approved by the department. The information  
4 provided by the Department of Corrections and Rehabilitation  
5 shall be limited to information that is currently maintained in an  
6 electronic format.

7 (3) The State Department of Mental Health shall provide to the  
8 Department of Justice Sex Offender Tracking Program the names  
9 of all persons committed to its custody pursuant to Article 4  
10 (commencing with Section 6600) of Chapter 2 of Part 2 of Division  
11 6 of the Welfare and Institutions Code, within 30 days of  
12 commitment, and shall provide the names of all of those persons  
13 released from its custody within five working days of release.

14 (b) (1) On or before July 1, 2005, with respect to a person who  
15 has been convicted of the commission or the attempted commission  
16 of any of the offenses listed in, or who is described in, paragraph  
17 (2), the Department of Justice shall make available to the public  
18 via the Internet Web site his or her name and known aliases, a  
19 photograph, a physical description, including gender and race, date  
20 of birth, criminal history, prior adjudication as a sexually violent  
21 predator, the address at which the person resides, and any other  
22 information that the Department of Justice deems relevant, but not  
23 the information excluded pursuant to subdivision (a).

24 (2) This subdivision shall apply to the following offenses and  
25 offenders:

26 (A) Section 187 committed in the perpetration, or an attempt to  
27 perpetrate, rape or any act punishable under Section 286, 288,  
28 288a, or ~~298~~ 289.

29 (B) Section 207 committed with intent to violate Section 261,  
30 286, 288, 288a, or 289.

31 (C) Section 209 committed with intent to violate Section 261,  
32 286, 288, 288a, or 289.

33 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.

34 (E) Section 264.1.

35 (F) Section 269.

36 (G) Subdivision (c) or (d) of Section 286.

37 (H) Subdivision (a), (b), or (c) of Section 288, provided that the  
38 offense is a felony.

39 (I) Subdivision (c) or (d) of Section 288a.

40 (J) Section 288.3, provided that the offense is a felony.

1 (K) Section 288.4, provided that the offense is a felony.

2 (L) Section 288.5.

3 (M) Subdivision (a) or (j) of Section 289.

4 (N) Section 288.7.

5 (O) Any person who has ever been adjudicated a sexually violent  
6 predator, as defined in Section 6600 of the Welfare and Institutions  
7 Code.

8 (P) A felony violation of Section 311.1.

9 (Q) A felony violation of subdivision (b), (c), or (d) of Section  
10 311.2.

11 (R) A felony violation of Section 311.3.

12 (S) A felony violation of subdivision (a), (b), (c), or (d) of  
13 Section 311.4.

14 (T) Section 311.10.

15 (U) A felony violation of Section 311.11.

16 (c) (1) On or before July 1, 2005, with respect to a person who  
17 has been convicted of the commission or the attempted commission  
18 of any of the offenses listed in paragraph (2), the Department of  
19 Justice shall make available to the public via the Internet Web site  
20 his or her name and known aliases, a photograph, a physical  
21 description, including gender and race, date of birth, criminal  
22 history, the community of residence and ZIP Code in which the  
23 person resides or the county in which the person is registered as a  
24 transient, and any other information that the Department of Justice  
25 deems relevant, but not the information excluded pursuant to  
26 subdivision (a). On or before July 1, 2006, the Department of  
27 Justice shall determine whether any person convicted of an offense  
28 listed in paragraph (2) also has one or more prior or subsequent  
29 convictions of an offense listed in subdivision (c) of Section 290,  
30 and, for those persons, the Department of Justice shall make  
31 available to the public via the Internet Web site the address at  
32 which the person resides. However, the address at which the person  
33 resides shall not be disclosed until a determination is made that  
34 the person is, by virtue of his or her additional prior or subsequent  
35 conviction of an offense listed in subdivision (c) of Section 290,  
36 subject to this subdivision.

37 (2) This subdivision shall apply to the following offenses:

38 (A) Section 220, except assault to commit mayhem.

39 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

1 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
2 (i), of Section 286.

3 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
4 (i), of Section 288a.

5 (E) Subdivision (b), (d), (e), or (i) of Section 289.

6 (d) (1) On or before July 1, 2005, with respect to a person who  
7 has been convicted of the commission or the attempted commission  
8 of any of the offenses listed in, or who is described in, this  
9 subdivision, the Department of Justice shall make available to the  
10 public via the Internet Web site his or her name and known aliases,  
11 a photograph, a physical description, including gender and race,  
12 date of birth, criminal history, the community of residence and  
13 ZIP Code in which the person resides or the county in which the  
14 person is registered as a transient, and any other information that  
15 the Department of Justice deems relevant, but not the information  
16 excluded pursuant to subdivision (a) or the address at which the  
17 person resides.

18 (2) This subdivision shall apply to the following offenses and  
19 offenders:

20 (A) Subdivision (a) of Section 243.4, provided that the offense  
21 is a felony.

22 (B) Section 266, provided that the offense is a felony.

23 (C) Section 266c, provided that the offense is a felony.

24 (D) Section 266j.

25 (E) Section 267.

26 (F) Subdivision (c) of Section 288, provided that the offense is  
27 a misdemeanor.

28 (G) Section 288.3, provided that the offense is a misdemeanor.

29 (H) Section 288.4, provided that the offense is a misdemeanor.

30 (I) Section 626.81.

31 (J) Section 647.6.

32 (K) Section 653c.

33 (L) Any person required to register pursuant to Section 290  
34 based upon an out-of-state conviction, unless that person is  
35 excluded from the Internet Web site pursuant to subdivision (e).  
36 However, if the Department of Justice has determined that the  
37 out-of-state crime, if committed or attempted in this state, would  
38 have been punishable in this state as a crime described in  
39 subdivision (c) of Section 290, the person shall be placed on the

Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, if the offense is a misdemeanor.

(C) A felony violation of Section 311.1, subdivision (b), (c), or (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if the person submits to the department a certified copy of a probation report filed in court that clearly states that all victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

(D) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1,



1 or other official court document that clearly demonstrates that the  
2 offender was the victim's parent, stepparent, sibling, or grandparent  
3 and that the crime did not involve either oral copulation or  
4 penetration of the vagina or rectum of either the victim or the  
5 offender by the penis of the other or by any foreign object.

6 (iii) If, subsequent to his or her application, the offender commits  
7 a violation of probation resulting in his or her incarceration in  
8 county jail or state prison, his or her exclusion, or application for  
9 exclusion, from the Internet Web site shall be terminated.

10 (iv) For the purposes of this subparagraph, "successfully  
11 completed probation" means that during the period of probation  
12 the offender neither received additional county jail or state prison  
13 time for a violation of probation nor was convicted of another  
14 offense resulting in a sentence to county jail or state prison.

15 (3) If the department determines that a person who was granted  
16 an exclusion under a former version of this subdivision would not  
17 qualify for an exclusion under the current version of this  
18 subdivision, the department shall rescind the exclusion, make a  
19 reasonable effort to provide notification to the person that the  
20 exclusion has been rescinded, and, no sooner than 30 days after  
21 notification is attempted, make information about the offender  
22 available to the public on the Internet Web site as provided in this  
23 section.

24 (4) Effective January 1, 2012, no person shall be excluded  
25 pursuant to this subdivision unless the offender has submitted to  
26 the department documentation sufficient for the department to  
27 determine that he or she has a SARATSO risk level of low or  
28 moderate-low.

29 (f) The Department of Justice shall make a reasonable effort to  
30 provide notification to persons who have been convicted of the  
31 commission or attempted commission of an offense specified in  
32 subdivision (b), (c), or (d), that on or before July 1, 2005, the  
33 department is required to make information about specified sex  
34 offenders available to the public via an Internet Web site as  
35 specified in this section. The Department of Justice shall also make  
36 a reasonable effort to provide notice that some offenders are  
37 eligible to apply for exclusion from the Internet Web site.

38 (g) (1) A designated law enforcement entity, as defined in  
39 subdivision (f) of Section 290.45, may make available information  
40 concerning persons who are required to register pursuant to Section

1 290 to the public via an Internet Web site as specified in paragraph  
2 (2).

3 (2) The law enforcement entity may make available by way of  
4 an Internet Web site the information described in subdivision (c)  
5 if it determines that the public disclosure of the information about  
6 a specific offender by way of the entity's Internet Web site is  
7 necessary to ensure the public safety based upon information  
8 available to the entity concerning that specific offender.

9 (3) The information that may be provided pursuant to this  
10 subdivision may include the information specified in subdivision  
11 (b) of Section 290.45. However, that offender's address may not  
12 be disclosed unless he or she is a person whose address is on the  
13 Department of Justice's Internet Web site pursuant to subdivision  
14 (b) or (c).

15 (h) For purposes of this section, "offense" includes the statutory  
16 predecessors of that offense, or any offense committed in another  
17 jurisdiction that, if committed or attempted to be committed in this  
18 state, would have been punishable in this state as an offense listed  
19 in subdivision (c) of Section 290.

20 (i) Notwithstanding Section 6254.5 of the Government Code,  
21 disclosure of information pursuant to this section is not a waiver  
22 of exemptions under Chapter 3.5 (commencing with Section 6250)  
23 of Title 1 of Division 7 of the Government Code and does not  
24 affect other statutory restrictions on disclosure in other situations.

25 (j) (1) Any person who uses information disclosed pursuant to  
26 this section to commit a misdemeanor shall be subject to, in  
27 addition to any other penalty or fine imposed, a fine of not less  
28 than ten thousand dollars (\$10,000) and not more than fifty  
29 thousand dollars (\$50,000).

30 (2) Any person who uses information disclosed pursuant to this  
31 section to commit a felony shall be punished, in addition and  
32 consecutive to any other punishment, by a five-year term of  
33 imprisonment in the state prison.

34 (k) Any person who is required to register pursuant to Section  
35 290 who enters an Internet Web site established pursuant to this  
36 section shall be punished by a fine not exceeding one thousand  
37 dollars (\$1,000), imprisonment in a county jail for a period not to  
38 exceed six months, or by both that fine and imprisonment.

39 (l) (1) A person is authorized to use information disclosed  
40 pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions

1 of law, including Part 2 (commencing with Section 43) of Division  
2 1 of the Civil Code.

3 (m) The public notification provisions of this section are  
4 applicable to every person described in this section, without regard  
5 to when his or her crimes were committed or his or her duty to  
6 register pursuant to Section 290 arose, and to every offense  
7 described in this section, regardless of when it was committed.

8 (n) On or before July 1, 2006, and every year thereafter, the  
9 Department of Justice shall make a report to the Legislature  
10 concerning the operation of this section.

11 (o) A designated law enforcement entity and its employees shall  
12 be immune from liability for good faith conduct under this section.

13 (p) The Attorney General, in collaboration with local law  
14 enforcement and others knowledgeable about sex offenders, shall  
15 develop strategies to assist members of the public in understanding  
16 and using publicly available information about registered sex  
17 offenders to further public safety. These strategies may include,  
18 but are not limited to, a hotline for community inquiries,  
19 neighborhood and business guidelines for how to respond to  
20 information posted on this Internet Web site, and any other resource  
21 that promotes public education about these offenders.

22 SEC. 2. Section 1203.065 of the Penal Code is amended to  
23 read:

24 1203.065. (a) Notwithstanding any other provision of law,  
25 probation shall not be granted to, nor shall the execution or  
26 imposition of sentence be suspended for, any person who is  
27 convicted of violating paragraph (2) or (6) of subdivision (a) of  
28 Section 261, Section 264.1, 266h, 266i, 266j, or 269, paragraph  
29 (2) or (3) of subdivision (c), or subdivision (d), of Section 286,  
30 paragraph (2) or (3) of subdivision (c), or subdivision (d), of  
31 Section 288a, Section 288.7, subdivision (a) of Section 289, or  
32 subdivision (b) of Section 311.4.

33 (b) (1) Except in unusual cases where the interests of justice  
34 would best be served if the person is granted probation, probation  
35 shall not be granted to any person who is convicted of violating  
36 paragraph (7) of subdivision (a) of Section 261, subdivision (k) of  
37 Section 286, subdivision (k) of Section 288a, subdivision (g) of  
38 Section 289, or Section 220 for assault with intent to commit a  
39 specified sexual offense.

1 (2) When probation is granted, the court shall specify on the  
2 record and shall enter on the minutes the circumstances indicating  
3 that the interests of justice would best be served by the disposition.

4 SEC. 3. Section 1203.067 of the Penal Code is amended to  
5 read:

6 1203.067. (a) Notwithstanding any other law, before probation  
7 may be granted to any person convicted of a felony specified in  
8 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is  
9 eligible for probation, the court shall do all of the following:

10 (1) Order the defendant evaluated pursuant to Section 1203.03,  
11 or similar evaluation by the county probation department.

12 (2) Conduct a hearing at the time of sentencing to determine if  
13 probation of the defendant would pose a threat to the victim. The  
14 victim shall be notified of the hearing by the prosecuting attorney  
15 and given an opportunity to address the court.

16 (3) Order any psychiatrist or psychologist appointed pursuant  
17 to Section 288.1 to include a consideration of the threat to the  
18 victim and the defendant's potential for positive response to  
19 treatment in making his or her report to the court. Nothing in this  
20 section shall be construed to require the court to order an  
21 examination of the victim.

22 (b) If a defendant is granted probation pursuant to subdivision  
23 (a), the court shall order the defendant to be placed in an  
24 appropriate treatment program designed to deal with child  
25 molestation or sexual offenders, if an appropriate program is  
26 available in the county.

27 (c) Any defendant ordered to be placed in a treatment program  
28 pursuant to subdivision (b) shall be responsible for paying the  
29 expense of his or her participation in the treatment program as  
30 determined by the court. The court shall take into consideration  
31 the ability of the defendant to pay, and no defendant shall be denied  
32 probation because of his or her inability to pay.

33 SEC. 4. Section 12021 of the Penal Code is amended to read:

34 12021. (a) (1) Any person who has been convicted of a felony  
35 under the laws of the United States, the State of California, or any  
36 other state, government, or country or of an offense enumerated  
37 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted  
38 to the use of any narcotic drug, and who owns, purchases, receives,  
39 or has in his or her possession or under his or her custody or control  
40 any firearm is guilty of a felony.

1 (2) Any person who has two or more convictions for violating  
2 paragraph (2) of subdivision (a) of Section 417 and who owns,  
3 purchases, receives, or has in his or her possession or under his or  
4 her custody or control any firearm is guilty of a felony.

5 (b) Notwithstanding subdivision (a), any person who has been  
6 convicted of a felony or of an offense enumerated in Section  
7 12001.6, when that conviction results from certification by the  
8 juvenile court for prosecution as an adult in an adult court under  
9 Section 707 of the Welfare and Institutions Code, and who owns  
10 or has in his or her possession or under his or her custody or control  
11 any firearm is guilty of a felony.

12 (c) (1) Except as provided in subdivision (a) or paragraph (2)  
13 of this subdivision, any person who has been convicted of a  
14 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,  
15 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,  
16 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,  
17 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision  
18 (b) or (d) of Section 12034, Section 12040, subdivision (b) of  
19 Section 12072, subdivision (a) of former Section 12100, Section  
20 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the  
21 Welfare and Institutions Code, any firearm-related offense pursuant  
22 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,  
23 or of the conduct punished in paragraph (3) of subdivision (g) of  
24 Section 12072, and who, within 10 years of the conviction, owns,  
25 purchases, receives, or has in his or her possession or under his or  
26 her custody or control, any firearm is guilty of a public offense,  
27 which shall be punishable by imprisonment in a county jail not  
28 exceeding one year or in the state prison, by a fine not exceeding  
29 one thousand dollars (\$1,000), or by both that imprisonment and  
30 fine. The court, on forms prescribed by the Department of Justice,  
31 shall notify the department of persons subject to this subdivision.  
32 However, the prohibition in this paragraph may be reduced,  
33 eliminated, or conditioned as provided in paragraph (2) or (3).

34 (2) Any person employed as a peace officer described in Section  
35 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment  
36 or livelihood is dependent on the ability to legally possess a  
37 firearm, who is subject to the prohibition imposed by this  
38 subdivision because of a conviction under Section 273.5, 273.6,  
39 or 646.9, may petition the court only once for relief from this  
40 prohibition. The petition shall be filed with the court in which the

petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) (i) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

(ii) In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set

1 the hearing date and notify the petitioner and the prosecuting  
2 attorney of the date of the hearing. Upon making each of the  
3 following findings, the court may reduce or eliminate the  
4 prohibition, impose conditions on reduction or elimination of the  
5 prohibition, or otherwise grant relief from the prohibition as the  
6 court deems appropriate:

7 (A) Finds by a preponderance of the evidence that the petitioner  
8 is likely to use a firearm in a safe and lawful manner.

9 (B) Finds that the petitioner is not within a prohibited class as  
10 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,  
11 and the court is not presented with any credible evidence that the  
12 petitioner is a person described in Section 8100 or 8103 of the  
13 Welfare and Institutions Code.

14 (C) (i) Finds that the petitioner does not have a previous  
15 conviction under this subdivision, no matter when the prior  
16 conviction occurred.

17 (ii) In making its decision, the court may consider the interest  
18 of justice, any relevant evidence, and the totality of the  
19 circumstances. It is the intent of the Legislature that courts exercise  
20 broad discretion in fashioning appropriate relief under this  
21 paragraph in cases in which relief is warranted. However, nothing  
22 in this paragraph shall be construed to require courts to grant relief  
23 to any particular petitioner.

24 (4) Law enforcement officials who enforce the prohibition  
25 specified in this subdivision against a person who has been granted  
26 relief pursuant to paragraph (2) or (3) shall be immune from any  
27 liability for false arrest arising from the enforcement of this  
28 subdivision unless the person has in his or her possession a certified  
29 copy of the court order that granted the person relief from the  
30 prohibition. This immunity from liability shall not relieve any  
31 person or entity from any other liability that might otherwise be  
32 imposed.

33 (d) (1) Any person who, as an express condition of probation,  
34 is prohibited or restricted from owning, possessing, controlling,  
35 receiving, or purchasing a firearm and who owns, purchases,  
36 receives, or has in his or her possession or under his or her custody  
37 or control, any firearm but who is not subject to subdivision (a) or  
38 (c) is guilty of a public offense, which shall be punishable by  
39 imprisonment in a county jail not exceeding one year or in the  
40 state prison, by a fine not exceeding one thousand dollars (\$1,000),



1 or by both that imprisonment and fine. The court, on forms  
2 provided by the Department of Justice, shall notify the department  
3 of persons subject to this subdivision. The notice shall include a  
4 copy of the order of probation and a copy of any minute order or  
5 abstract reflecting the order and conditions of probation.

6 (2) For any person who is subject to subdivision (a), (b), or (c),  
7 the court shall, at the time judgment is imposed, provide on a form  
8 supplied by the Department of Justice, a notice to the defendant  
9 prohibited by this section from owning, purchasing, receiving,  
10 possessing or having under his or her custody or control, any  
11 firearm. The notice shall inform the defendant of the prohibition  
12 regarding firearms and include a form to facilitate the transfer of  
13 firearms. Failure to provide the notice shall not be a defense to a  
14 violation of this section.

15 (e) Any person who (1) is alleged to have committed an offense  
16 listed in subdivision (b) of Section 707 of the Welfare and  
17 Institutions Code, an offense described in subdivision (b) of Section  
18 1203.073, any offense enumerated in paragraph (1) of subdivision  
19 (c), or any offense described in subdivision (a) of Section 12025,  
20 subdivision (a) of Section 12031, or subdivision (a) of Section  
21 12034, and (2) is subsequently adjudged a ward of the juvenile  
22 court within the meaning of Section 602 of the Welfare and  
23 Institutions Code because the person committed an offense listed  
24 in subdivision (b) of Section 707 of the Welfare and Institutions  
25 Code, an offense described in subdivision (b) of Section 1203.073,  
26 any offense enumerated in paragraph (1) of subdivision (c), or any  
27 offense described in subdivision (a) of Section 12025, subdivision  
28 (a) of Section 12031, or subdivision (a) of Section 12034, shall  
29 not own, or have in his or her possession or under his or her  
30 custody or control, any firearm until the age of 30 years. A  
31 violation of this subdivision shall be punishable by imprisonment  
32 in a county jail not exceeding one year or in the state prison, by a  
33 fine not exceeding one thousand dollars (\$1,000), or by both that  
34 imprisonment and fine. The juvenile court, on forms prescribed  
35 by the Department of Justice, shall notify the department of persons  
36 subject to this subdivision. Notwithstanding any other law, the  
37 forms required to be submitted to the department pursuant to this  
38 subdivision may be used to determine eligibility to acquire a  
39 firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the

1 penalties for a violation of the prohibition. The order shall also  
2 state on its face the expiration date for relinquishment.

3 (4) If probation is granted upon conviction of a violation of this  
4 subdivision, the court shall impose probation consistent with  
5 Section 1203.097.

6 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is  
7 justifiable where all of the following conditions are met:

8 (A) The person found the firearm or took the firearm from a  
9 person who was committing a crime against him or her.

10 (B) The person possessed the firearm no longer than was  
11 necessary to deliver or transport the firearm to a law enforcement  
12 agency for that agency's disposition according to law.

13 (C) If the firearm was transported to a law enforcement agency,  
14 it was transported in accordance with paragraph (18) of subdivision  
15 (a) of Section 12026.2.

16 (D) If the firearm is being transported to a law enforcement  
17 agency, the person transporting the firearm has given prior notice  
18 to the law enforcement agency that he or she is transporting the  
19 firearm to the law enforcement agency for disposition according  
20 to law.

21 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or  
22 (e), the trier of fact shall determine whether the defendant was  
23 acting within the provisions of the exemption created by this  
24 subdivision.

25 (3) The defendant has the burden of proving by a preponderance  
26 of the evidence that he or she comes within the provisions of the  
27 exemption created by this subdivision.

28 (i) Subject to available funding, the Attorney General, working  
29 with the Judicial Council, the California Alliance Against Domestic  
30 Violence, prosecutors, and law enforcement, probation, and parole  
31 officers, shall develop a protocol for the implementation of the  
32 provisions of this section. The protocol shall be designed to  
33 facilitate the enforcement of restrictions on firearm ownership,  
34 including provisions for giving notice to defendants who are  
35 restricted, provisions for informing those defendants of the  
36 procedures by which defendants shall dispose of firearms when  
37 required to do so, provisions explaining how defendants shall  
38 provide proof of the lawful disposition of firearms, and provisions  
39 explaining how defendants may obtain possession of seized  
40 firearms when legally permitted to do so pursuant to this section

1 or any other provision of law. The protocol shall be completed on  
2 or before January 1, 2005.

3 SEC. 5. Section 12022.3 of the Penal Code is amended to read:

4 12022.3. For each violation of Section 220 involving a specified  
5 sexual offense, or for each violation or attempted violation of  
6 Section 261, 262, 264.1, 286, 288, 288a, or 289, and in addition  
7 to the sentence provided, any person shall receive the following:

8 (a) A 3-, 4-, or 10-year enhancement if the person uses a firearm  
9 or a deadly weapon in the commission of the violation.

10 (b) A one-, two-, or five-year enhancement if the person is armed  
11 with a firearm or a deadly weapon.

12 SEC. 6. Section 12022.8 of the Penal Code is amended to read:

13 12022.8. Any person who inflicts great bodily injury, as defined  
14 in Section 12022.7, on any victim in a violation of Section 220  
15 involving a specified sexual offense, or a violation or attempted  
16 violation of paragraph (2), (3), or (6) of subdivision (a) of Section  
17 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section  
18 264.1, subdivision (b) of Section 288, subdivision (a) of Section  
19 289, or sodomy or oral copulation by force, violence, duress,  
20 menace, or fear of immediate and unlawful bodily injury on the  
21 victim or another person as provided in Section 286 or 288a shall  
22 receive a five-year enhancement for each violation in addition to  
23 the sentence provided for the felony conviction.

24 SEC. 7. Section 1.5 of this bill incorporates amendments to  
25 Section 290.46 of the Penal Code proposed by both this bill and  
26 SB 1187. It shall only become operative if (1) both bills are enacted  
27 and become effective on or before January 1, 2009, but this bill  
28 becomes operative first, (2) each bill amends Section 290.46 of  
29 the Penal Code, and (3) this bill is enacted after SB 1187, in which  
30 case Section 290.46 of the Penal Code, as amended by Section 1  
31 of this bill, shall remain operative only until January 1, 2010, at  
32 which time Section 1.5 of this bill shall become operative.

33 SEC. 8. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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